IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.4165 of 2007
LAL BABU CHAUDHARY & ANR
Versus
STATE OF BIHAR & ANR

For the Petitioners : Mr. Tilak Sao, Advocate.
For the State : Mr. Jharkhandi Upadhayay, A.P.P.
For O.P. No.2 : Mr. Chitranjan Sinha, Senior Advocate.

O R D E R

The two petitioners who were named as accused in Complaint Case No.896 of 2001 giving rise to Alamganj P.S. Case No.10 of 2002 registered under Sections 420/467/468/471/120(B)/34 I.P.C. have prayed for the quashing of the order dated 27.11.2006 passed therein by the learned Additional Chief Judicial Magistrate, Patna City, whereunder he has taken cognizance of those offences against the petitioners.

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According to Nagendra Prasad Chaudhary, the complainant, impleaded herein as O.P. No.2, his marriage with petitioner no.2, Saroj Kumari alias Anita Devi, the daughter of petitioner no.1, Lal Babu Chaudhary, was solemnized in the year 1987 but she could live for 15 days only in her matrimonial home whereafter she returned to her parental home and notwithstanding several attempts by him to bring her back , the accused persons refused to let her return back on the pretext that the daughter was not ready to live with an illiterate man and that she would be married else where and thereafter his wife never returned to the marital home. It is also alleged that even when the complainant's mother expired on 18.7.1989 and she was informed about her death she never came to pay her respect and said that the relationship had terminated and

accused no.1 gave out that she would be married else where and in keeping with the words accused no.2 was allegedly married to one Binod Kumar and out of that wedlock two daughters were born whereafter Binod Kumar expired.

It appears that petitioner no.2 had filed one complaint case being Case No.168(C)99 against the opposite party no.2 and others on 12.45.1999 in the court of the learned Additional Chief Judicial Magistrate, Patna City, and thereafter she filed another case for maintenance under Section 125 Cr.P.C. before the Family Court, Patna, being Maintenance Case No.85(M) of 1996 wherein she alleged that the complainant, Nagendra Prasad Chaudhary, had married one Rina Kumari, in the life time of his first wife, i.e., Saroj Kumari, in the **Patan Devi** temple and in this respect and in support thereof Saroj Devi produced one Marriage Certificate dated 13.4.1999 granted by the **Mahant**/Management of the said temple which Nagendra Prasad Chaudhary claimed was false and fabricated. It was also alleged that two birth certificates of the two daughters , Ranjeeta Bharti and Shiva Bharti purported to have been granted by the Patna Municipal Corporation were submitted before the Family Court wherein the father's name of the two daughters was revealed as Nagendra Prasad Chaudhary and these too as claimed by Nagendra Prasad Chaudhary, were false and fabricated to give lawful paternity to the children.

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It appears that the complaint filed by Nagendra Prasad Chaudhary being Complaint Case No.896 of 2001 was transmitted to the concerned police station under Section 156(3) Cr.P.C. and on the basis

thereof Alamganj P.S. Case No.10 of 2002 was registered.

It appears that the F.I.R. was impugned before this Court in Cr.W.J.C. No.20 of 2003 which was dismissed vide order dated 22.9.2004 giving liberty to the petitioner to challenge the order of cognizance in accordance with law.

It has been submitted on behalf of the petitioners that the complainant has got no right under the law to file a complaint against the petitioners with an allegation that the documents submitted in a judicial proceeding, namely, Maintenance Case No.85(M) of 1996, were false and fabricated and it was only for the court to file a complaint in the event the documents were declared to be false and fabricated . In that view of the matter the provision of Section 195(1)(b)(ii) Cr.P.C. would be attracted. In support of the submissions reliance was sought to be placed on the case of Gopalakrishna Menon Vs. D.Raja Reddy(AIR 1983 SC 1053) wherein it was held that in the absence of a complaint by the court the prosecution would not be maintainable.

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It is apparent that in a case of this type the complaint has to be made in writing by the court which was originally in session of the matter. In the instant case, the alleged fake and fabricated documents were filed in court after securing the same and no one has raised any grievance against it. It was only thereafter that the learned Magistrate on a petition being filed by the complainant sent the complaint to the police for registering a case notwithstanding the fact that the alleged forgery was committed before the court if the allegations of the documents being forged and fabricated were to be believed.

In the case of Abdul Aziz Vs. The State of Bihar, reported in 2004(4) PLJR 818 , it was categorically held that in the absence of a complaint by the court the prosecution would not be maintainable . As such, it was only the Family Court at Patna which was competent to make an inquiry to ascertain forgery and to file a complaint petition on its subjective satisfaction since the forgery was committed in a proceeding pending before it and the complainant-opposite party no.2 had no locus standi to file the complaint against the petitioners in view of the bar under Section 195(1)(b)(ii) Cr.P.C.

Due regard being had to the facts and the circumstances of the case and the discussions made above, prosecution of the petitioners on the basis of the complaint filed by opposite party no.2 herein, cannot be sustained in law and is required to be quashed or else there would an abuse of the process of the court.

Accordingly, the application succeeds and the impugned order taking cognizance is hereby quashed.

(Abhijit Sinha,J)

Patna High Court, Patna.
Dated: The 16th of May, 2008.
Pradeep Srivastava/A.F.R.

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